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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 71

JAMES RICHARD PETERSON, ET AL.,
PETITIONERS,

vs.

CITY OF GREENVILLE

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF SOUTH CAROLINA

PETITION FOR CERTIORARI FILED FEBRUARY 26, 1962
CERTIORARI GRANTED JUNE 25, 1962

SUPREME COURT OF THE UNITED STATES

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., AUGUST 1, 1962

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[fol. A]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

CITY OF GREENVILLE, Respondent,

against

JAMES RICHARD PETERSON, YVONNE JOAN EDDY, HELEN ANGELA EVANS, DAVID RALPH STRAWDER, HAROLD JAMES FOWLER, FRANK G. SMITH, ROBERT CROCKETT, JAMES CARTER, DORIS DELORES WRIGHT and ROSE MARIE COLLINS, Appellants.

APPEAL FROM GREENVILLE COUNTY

HONORABLE JAMES H. PRICE, SPECIAL COUNTY JUDGE

Transcript of Record

[fol. 1]

IN THE SUPREME COURT OF SOUTH CAROLINA

STATEMENT

The ten (10) appellants, all of whom are Negro high school students, were arrested on August 9, 1960, and charged with violating Act No. 743 (R896, H2135) Acts and Joint Resolutions of the General Assembly of South Carolina for 1960, Trespass after Notice.

Appellants were tried before Greenville City Recorder John V. Jester of Greenville, South Carolina, without a jury on August 11, 1960. Evidence presented was that the appellants seated themselves at the lunch counter of S. H. Kress and Company in Greenville and were thereafter requested to leave by the Manager. S. H. Kress and Company does not serve Negroes at the lunch counter of its Greenville store although Negroes are welcome to do business in all other departments thereof. Also, there is an

ordinance which prohibits Negroes and white persons from being served in the same restaurant at the same time. The management requested appellants to leave, it having been announced that the lunch counter was closed. The closing of the lunch counter was because of the presence of appellants. Upon their refusal to leave, appellants were thereupon arrested and charged with the offense of trespass after notice. At the conclusion of all of the evidence, Judge Jester found each of the appellants "guilty" and sentenced each of them to pay fines of One Hundred ($100.00) Dollars or serve thirty (30) days in prison.

Notice of Intention to Appeal was duly served upon the City Recorder.

Thereafter, the matter was argued before Honorable James H. Price, Special Judge, Greenville County Court.

On March 17, 1961, Judge Price issued an Order, affirming the judgment of the City Recorder.

[fol. 2] Notice of Intention to Appeal was thereupon duly served upon the City Attorney.

Proceedings Before City Recorder

Judge Jester: Mr. Arnold, is the city ready?

Mr. Arnold: Yes.

Judge Jester: Mr. Perry, defendants ready?

Mr. Smith: I would like to make a motion.

Judge Jester: Mr. Arnold, before we get into this I would like this man to move off the front row. I want to bring the defendants and put them on the front row. Are the defendants we have here? James Richard Peterson, is he here? Come around, James, and have a seat, James Carter, David Ralph Strawder, Frank G. Smith, Robert Crockett, Joan Yvonne Eddy, Helen Angela Evans, Harold James Fowler, Doris Wright and Rose Marie Collins. All of these defendants, Mr. Smith and Mr. Perry, are charged with trespassing after warning in violation of Act of 1960, number R896 H2135 of the state code of South Carolina. Do they plead guilty or not guilty?

Mr. Smith: Before we take the plea, Your Honor, we would like to make a motion to precede that, please?

Judge Jester: We will be glad to hear you on the motion.

Motion to Quash Information and Dismiss Warrant and Denial Thereof

Mr. Smith: At this time, on behalf of all these defendants, Your Honor, we make a motion to quash the information and dismiss the warrant on the grounds that as stated, the charge is too indefinite and uncertain as to apprise these defendants of what they are actually being charged with. We feel that under the court merely to state the act charged under, and for trespassing is not enough, there should be some more under, these defendants are [fol. 3] not properly apprised of what they are actually being charged with under this warrant as drawn here.

Judge Jester: Anything further, Mr. Smith?

Mr. Smith: No, sir it's just too indefinite and uncertain.

Judge Jester: Anything, Mr. Perry?

Mr. Perry: May I just add one sentence to the motion and that is, that the defendants are entitled under the Constitution of the State of South Carolina to be fully informed of the nature of the charge against them and to require them to got to trial on a warrant which is so vaguely and indefinitely phrased is to deprive them of liberty without due process of law, as protected under the 14th Amendment to the United States Constitution, and under the South Carolina Constitution.

Judge Jester: Anything further?

Mr. Perry: No, sir.

Judge Jester: Any reply, Mr. Arnold?

Mr. Arnold: No, sir, Your Honor, I think the warrant is sufficiently definite, it refers to the number of the Act. The Act hasn't come out in bound volumes yet, as opposing counsel knows, but it's referred to the number and the date and I think it states trespass after notice and that's substance of the act.

Judge Jester: I overrule your motion, Mr. Smith and Mr. Perry. Now then, we have these defendants charged as I so stated and my next question. Do they plead guilty or not guilty?

PLEA

Mr. Smith: All of the defendants plead not guilty.

Judge Jester: And I understand that by agreement the city and counsel for the defendants have agreed to try all of these cases at one time?

Mr. Smith: That is correct.

STATE OF SOUTH LINA
COUNTY OF GR VILLE

MUNICIPAL COURT
CITY OF GREENVILLE

THE CITY

vs.

Peterson, James Richard
LAST FIRST MIDDLE
Defendant

ARREST AND/OR TRIAL WARRANT

No. 5330

Offense Trespassing After Warning, Act. of 1960 No. R896, H2135, of the State of South Carolina

Bond Required $100.00

Bond Posted $

Recognizance ☐ Cash ☐

By

DATE SET FOR TRIAL

8 AM Aug 10 19 60

Attorney for defendant

MOTIONS

TRIAL WARRANT

No. ~~5625~~ 5330

STATE OF SOUTH CAROLINA } MUNICIPAL COURT
COUNTY OF GREENVILLE } CITY OF GREENVILLE

[fol. 3a]

PERSONALLY comes before me deponent who makes oath that upon information and belief in this State and County and within the Limits of the City of Greenville on the 9th day of Aug, 1960, the defendant James Richard Peterson C/M did commit the offense of Trespassing After Warning Act. of 1960 No R896, H2135 of the State of South Carolina, approved by the Governor May 14, 1960

All of which is against forms of the ordinances made and provided for, and against the peace and dignity of the City of Greenville; and that

are witnesses for the City, and that defendant did commit said offense in the view of deponent, whereupon deponent, a police officer, did arrest defendant.

s/G.C. Bramlette

Sworn to before me this 9th day of Aug. A. D. 1962

(See reverse side if not an On-View Arrest)

s/ J. E. Meddlelor (L.S.)
Notary Public for South Carolina
Recorder, Municipal Court

Name Peterson, James Richard
LAST FIRST MIDDLE

Alias

Bond Required $100.00

Bond Posted $

Recognizance ☐ Cash ☐

By

DATE SET FOR TRIAL

8 AM Aug 10 19 60

Attorney for defendant

MOTIONS

VERDICT

Recorder Foreman

JUDGMENT

$ or days

this 19

Recorder

Attest:

Clerk

and against the peace and dignity of the City of Greenville; and that

are witnesses for the City, and that defendant did commit said offense in the view of deponent, whereupon deponent, a police officer, did arrest defendant.

s/G.C. Bramlette

Sworn to before me this 9th day

of Aug. A. D. 1962 (See reverse side if not an On-View Arrest)

s/ J. E. Meddlelor (L.S.)
Notary Public for South Carolina
Recorder, Municipal Court

Name Peterson, James Richard
LAST FIRST MIDDLE

Alias

Color C Age 16 Sex M Nationality Negro

Address

Cell No. 3-4 B.O.D. 10-8-43

Driver's License No. State

On-View Arrest ☐ Reported ☐ Other ☐

Officers Capt. Bramlette, Ast. Lt. Voughn, Johnson,

Date of Arrest 8-9-60 19 Time 11:43 M

Where Side Door Kress

Date of Release Time M

Witnesses

Other Information:

Desk Officer

ARREST WARRANT

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

MUNICIPAL COURT
CITY OF GREENVILLE

To the Chief of Police of the City of Greenville or any Police Officer thereof or

_____:

Arrest and bring before me, or the Presiding Recorder, the defendant charged with _____

_____

as shown on the reverse side hereof, and the witnesses for the City herein named.

Given under my hand and seal this _____ day of _____, 19____.

_____ (SEAL)
Recorder, Municipal Court

I appoint any Police Officer of the City of Greenville or _____ to execute this warrant.

_____ (SEAL)
Recorder, Municipal Court

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Personally comes the undersigned deponent and makes oath that he arrested the defendant _____

_____

on the _____ day of _____, 19____

at _____

in the City of Greenville, State and County aforesaid.

_____

Given under my hand and seal this _____ day

of _____, 19__.

_____ (SEAL)

Recorder, Municipal Court

I appoint any Police Officer of the City of Greenville or _____

_____ to execute this warrant.

_____ (SEAL)

Recorder, Municipal Court

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Personally comes the undersigned deponent and makes oath that he arrested the defendant _____

_____

on the _____ day of _____, 19__

at _____

in the City of Greenville, State and County aforesaid.

_____

Sworn to before me this _____

day of _____, 19__

_____ (SEAL)

Notary Public for South Carolina
Recorder, Municipal Court

(THIS SIDE TO BE USED ONLY IN REPORTED CASES—IT IS NOT TO BE USED WHERE ARREST HAS BEEN MADE BY OFFICER FOR OFFENSE COMMITTED IN HIS PRESENCE)

[fol. 4]

BEFORE THE CITY RECORDER

TRANSCRIPT OF EVIDENCE

CAPTAIN G. O. BRAMLETTE

Judge Jester: And the facts and finding of one case would be the facts and finding of all as far as the record is concerned?

Mr. Smith: That is correct.

Mr. Perry: May I make one addition, Your Honor, that in the event that the testimony should indicate that one or more of the defendants is to be treated differently, from the rest of them in terms of any judgment of Your Honor, that at such time as the evidence does develop, that state of facts, that a motion for dismissal will be proper as to the person or any other motion which might be applicable to the situation.

Judge Jester: Well, I agree with you at this time until I have heard such a motion.

Mr. Perry: Yes, sir.

Judge Jester: Now who is the first witness, Mr. Arnold?

Mr. Arnold: Captain Bramlette.

CAPTAIN G. O. BRAMLETTE, being duly sworn, testified as follows:

Direct examination.

By Mr. Arnold:

Q. Captain Bramlette, I believe you are a member of the police force of the City of Greenville?

A. That is correct.

Q. Your rank is Captain?

A. Yes, sir.

Q. How long have you been captain with the department?

A. Approximately five years.

Q. On August 9 of this year, did you receive a call from Kress Five and Ten Cent Variety Store?

[fol. 5] A. I had a call, I do not know where it come from Kress or not.

Q. You had a call?

A. Yes, sir.

Q. As a result of that call where did you go?

A. To Kress' Five and Ten Cent Store on South Main St.

Q. Where were you when you received the call?

A. In Police Headquarters.

Q. Did anyone accompany you?

A. Yes, sir.

Q. Who?

A. I went in patrol car 9 with Officers Berry and Wall.

Q. About what time was it you received the call?

A. 11:18 a. m.

Q. All right, when you got to Kress' on South Main St., did you find any of the defendants?

Mr. Perry: Your Honor, may I interpose a slight objection to Mr. Arnold's methods. I believe that his questions tend to be leading and if he would kindly rephrase it so as to let the witness testify as to what he found, I don't believe it would be objectionable.

Q. When you arrived at Kress' Store, did you go into the store?

A. I did.

Q. What did you find in the store, and I direct your attention to the lunch counter?

A. I met Officer Vaughan at the side door on McBee Avenue, he and I and several other officers entered the store. On arriving inside the store at the lunch counter which is located right rear of Kress, Officers, State Agents Hillyer and Morris were there and at the lunch counter we noticed these defendants along with four more. There [fol. 6] were fourteen sitting at the lunch counter, the other four are juveniles.

Q. You saw these ten defendants, did you or not?

A. I did.

Q. And they were doing what?

A. They were sitting at the lunch counter.

Q. Sitting at the lunch counter? Now you mentioned two SLED Agents, Mr. Hillyer and Mr. Morris. Were they in the store when you arrived?

A. They were.

Q. All right. Do you know Mr. G. W. West?

A. I do.

Q. What position, if any, does he hold with the Kress Store?

A. He's manager of the Kress Store.

Q. Was Mr. West, or not, in the store when you arrived?

A. He was.

Q. Approximately where was he?

A. He was at the rear, at the lunch counter.

Q. Did he make any statement to these ten defendants?

A. He did.

Q. What did he say?

A. He announced that the lunch counter was being closed and would everyone leave the store.

Q. Would everyone leave the store?

A. Yes.

Q. Did these ten defendants, or any one of them, leave the store?

A. They did not.

Q. Did they, were they standing or sitting when this request was made?

A. They were sitting.

[fol. 7] Q. Did they or not continue to sit?

A. They continued to sit.

Q. All right. What, if anything, did you do?

A. After a reasonable length of time we announced that they were all under arrest.

Q. Did you transport them to headquarters?

A. We had a patrol car outside and we carried them out the side door of Kress, we carried the girls first and put them in the patrol car and brought them to police headquarters.

Q. All right, sir, when they were brought to headquarters

is it, or not, customary to remove any personal effects, such as money, or knife or watch from a prisoner?

A. It is customary.

Q. All right, was that done in this case with respect to these ten defendants?

A. It was.

Q. All right, what amount of money, if any, was found on the person of Doris Wright?

A. Twenty-four cents.

Q. On Helen Evans?

A. Thirty-one cents.

Q. James Carter?

A. No money.

Q. Robert Crockett?

A. No money.

Q. Rose Marie Collins?

A. No money.

Q. Yvonne Eddy?

A. One dollar.

Q. James Richard Peterson?

A. One dollar and ninety-one cents.

[fol. 8] Q. David Ralph Strawder?

A. One dollar and eleven cents.

Q. Harold James Fowler?

A. None.

Q. Frank G. Smith, Jr.?

A. Five dollars and fifty-five cents.

Q. I believe that bond was posted for these defendants?

A. It was.

Q. When they were discharged under the bond, under their bonds, was the money and any other personal effects returned to the defendants?

A. State that again.

Q. When they were discharged under the appearance bond, this money that had been taken from the defendants, was it returned to the defendants?

A. It was.

Mr. Arnold: Witness with you.

Cross examination.

By Mr. Matthew J. Perry:

Q. Captain Bramlette, as I understand, you are a captain on the Greenville Police Force for five years?

A. Approximately five years, yes, sir.

Q. I see, and of course, were you also employed on the Greenville City Police Force prior to that time?

A. That's correct.

Q. I see. As captain are you chief of the police, or not?

A. No, my position is in charge of one platoon.

Q. I see. Now, sir, I believe that you indicated that on the 9th of August you were at headquarters and received a call to go to Kress' 5 and 10¢ Store?

A. That is correct.

[fol. 9] Q. Do you know who made the call?

A. I do not know who called police headquarters but my radio and telephone man informed me.

Q. I see. And I believe you said that you and Officer Vaughn went into the store together, you having met him?

A. Along with two or three others.

Q. What did you expect to find when you went to Kress?

A. I was told by Officer Mann who is my communications officer, there were a number of colored young boys and girls sitting at the lunch counter at Kress'.

Q. I see. Does Greenville have an ordinance against conduct of this sort?

A. We do.

Q. What is the ordinance, please?

Mr. Arnold: I don't see that's relevant, they're not charged under any segregation ordinance of the city.

Judge Jester: On the state law, am I right, Mr. Perry?

Mr. Perry: Judge Jester, if I may, sir, whatever it was that prompted Captain Bramlette to go to Kress' upon being informed that Negroes were sitting at the lunch counter, I think is relevant. In other words, he must have been conscious of some law because after all, he's a law enforcement officer and I respectfully submit that

I'm entitled to ask him on cross examination what law he was purporting to proceed upon.

Judge Jester: Your question was, does the City of Greenville have a law pertaining to this particular offense? All right, I'll let him answer it.

Mr. Perry: Thank you. Does the City of Greenville have such a law, Captain Bramlette?

A. They do.

[fol. 10] Q. What is that law, please, sir?

A. It forbids colored and white eating at the same lunch counter.

Q. I see.

Mr. Perry: Your Honor, would you indulge me a moment, please, sir, I would like to look at that ordinance. I won't take but a moment. I did not know that the City of Greenville had such an ordinance.

(Discussion off the record.)

By Mr. Perry:

Q. Now, Captain Bramlette, as you answered this call to go to Kress', then you had the City Ordinance in mind which required separation of races in restaurants and eating places in the City of Greenville?

A. I did not.

Q. Yet you knew of the existence of such law?

A. I did.

Q. And as a Captain of the Greenville City Police Force, you did not have this ordinance in mind when you went to investigate?

A. I had the recently passed State law in mind.

Q. I see. Did the caller identify the race of the persons who were sitting at the lunch counter?

Mr. Arnold: That would be hearsay.

Judge Jester: What was the question?

Mr. Arnold: He asked the caller identify the race.

Mr. Perry: I agree it would be hearsay.

By Mr. Perry:

Q. All right, sir, now, when you went—as you answered the call then, did you receive information that there was any violation of the public order taking place?

[fol. 11] A. I was informed by my communications officer that there was a number of colored boys and girls sitting at the lunch counter in Kress'.

Q. But there is nothing wrong with that, is there, sir?

Mr. Arnold: I don't think he has to pass on that, it's a matter of conclusion.

Judge Jester: I don't think that's in his discretion, Mr. Perry. He has the right to make the arrest and disclose later whether he's right in doing so, and I right?

Mr. Perry: If Your Honor will bear with me, I believe that as an Officer of the Law, Captain Bramlette and his associates would, of course, naturally under their interpretation of the existing law be bound to enforce law and if there was nothing wrong with their sitting there perhaps he would not have had occasion to go to make the arrest.

Mr. Arnold: May it please the Court, it's the procedure of the City that when an officer gets a call to come to a certain place it is not necessary for the caller, or the informer to state what is taking place and it's not necessary that the Officer take time to find out. If he's called to come to a certain place and he's on duty he should go there and investigate whatever may be transpiring or taking place.

Judge Jester: I think that is in substance, Mr. Perry, the attitude of the officer when they are on call because they could explain it had been a man killed or a man beating his wife and forty other things there before you went to see what was happening. I think possibly the main thing to do is get there and find out what's going on.

Mr. Perry: Thank you.

[fol. 12] By Mr. Perry:

Q. Then, Captain Bramlette, when you arrived at Kress' and saw these young people sitting at the lunch counter, were they orderly?

A. They were.

Q. Were they talking among each other?

A. Some of them were talking.

Q. Could you hear them talking?

A. I could not repeat a thing that was said, I may have heard their voices.

Q. Did any of them use any profanity?

A. I did not hear any.

Q. Were they well dressed?

A. All were neat in appearance.

Q. Neat in appearance, did you ascertain that they were clean?

Mr. Arnold: I don't see that's relevant. We're not raising any question on that. He said they were neat in appearance and they were orderly. The specific charge is under the State Law and whether a person's hands are clean or a little dirty is not relevant in a case like this.

Mr. Perry: I think if the Captain knows he certainly may testify to it on Cross Examination.

Judge Jester: I'll let him answer, Mr. Arnold.

The Witness: State the question again.

By Mr. Perry:

Q. Would you say in your opinion that they were clean or dirty?

A. They were clean.

Q. So there was nothing about their persons of an unoffensive character, was it, in terms of neatness and cleanliness?

A. That's correct.

[fol. 13] Q. Now, Captain Bramlette, you've been a citizen of Greenville for quite some time?

A. That's correct.

Q. Have you had occasion to go in and out of Kress' Five and Ten Cent Store before?

A. Very few occasions.

Q. Have you been in and out of the place of business enough to know anything about its policy of serving the public?

A. I've been there numerous occasions but not, I would say, I would.

Q. Does Kress' Five and Ten Cent Store generally serve members of the public in its various departments without regard to race?

Mr. Arnold: I don't see that that's relevant.

Judge Jester: Well, in this particular case it isn't, Mr. Arnold. I think what he is getting at and getting in the record is whether or not the store that's open is selling merchandise of any and all kinds and items to the public. That's the purpose for the question, am I right?

Mr. Perry: All right.

Judge Jester: I'll let him answer yes or no.

The Witness: Yes.

By Mr. Perry:

Q. Kress' Five and Ten Cent Store, I believe, is a rather large variety store, is it not?

A. Yes.

Q. Then it has many departments, hasn't it?

A. Yes.

Q. I believe it sells some aspects, clothing and various trinkets and all of the items that are usually sold in the stores such as Kress', that is a variety store.

A. That is correct.

[fol. 14] Q. Now, let's go for a moment, please to the lunch counter in Kress'. I believe Kress' in Greenville does have a lunch counter, does it not?

A. That's correct.

Q. And at that lunch counter members of the public are served, aren't they?

A. That's correct.

Q. Except that, I believe, withdraw that question—what is the policy of Kress', if you know, sir, with regards to serving members of the Negro public at its lunch counter?

A. The policy of Kress', I'd rather for the manager of Kress' to answer that.

Q. That's quite all right, I have no intention to tax you with an unpleasant answer. Then as you saw these young, neat, clean and unoffensive colored people, what was it then

that made you, as a law enforcement officer of the City of Greenville, go into operation?

A. Under the State Law just passed by the Governor relative to sit-down lunch counters in Greenville, I enforced this order.

Q. But the State Law that just passed and signed by the Governor in May doesn't mention anything about Negroes sitting at lunch counters, does it?

A. It mentions sit-ins.

Q. Perhaps you would like to refresh your mind for a moment?

A. I was wrong, it doesn't mention sit in.

Q. Thank you, sir. So that that particular statute didn't indicate any course of action on your part at that time, did it, sir?

A. Not until after I arrived.

Q. And after you arrived there, what did the statute indicate that you should do?

[fol. 15] A. We arrested them and made a case, trespassing after warning.

Q. Who were they warned about?

A. Mr. West, the manager of Kress'.

Q. What was the substance of this warning?

A. State that again.

Q. I would just like to know what was the warning that you said was made.

A. He announced that the lunch counter was being closed and would everyone leave.

Q. I see. Did I understand on your Direct Examination that he said "everyone leave the place"?

A. This lunch counter, I do not know. I think he said the lunch counter was closed.

Q. I see. Now this was, I believe, 11:18 in the morning or shortly thereafter?

A. That's when I received the call.

Q. I see. August 9, I believe, was on a Tuesday, wasn't it?

A. That's correct.

Q. Now, could you, sir, tell me what time business places in Greenville normally close?

A. Between five and six o'clock in the evening.

Q. I see, those hours of opening and closing are more or less regulated not by law but by mutual consent, regulated by the Chamber of Commerce, aren't they?

A. I would imagine individual stores decide when they will open and close.

Q. But isn't it a fact that most stores open and close about the same time in Greenville?

A. That's correct.

Q. So that there is some uniformity, either by agreement or som how, among the store owners that they open, they [fol. 16] close the stores at a certain time, and close at a certain time?

A. I couldn't answer that.

Q. Well, now, sir, as a member of the public and also a member of the Greenville City Police Force don't you have knowledge that the places of business in Greenville are closed at a certain time?

A. I'm sure they have a certain time to close.

Q. And you have just now stated that Kress' ordinarily closes around five or six o'clock?

A That's correct. Most of the time, I think, Friday night they stay open later.

Q. All right, sir. Now, why do you suppose they closed at that time?

Mr. Arnold: I don't think it's up to him to answer that question.

Judge Jester: I think this was a call to the police department, Mr. Perry; for an officer and I believe that the manager of the store will be in better position to answer that question, than the officer as to why he closed, am I right?

Mr. Perry: Thank you, sir. May I ask, is the manager of the store in the Courtroom?

Mr. Arnold: He's in the Courtroom and will be put on the stand.

By Mr. Perry:

Q. Did the manager of Kress', did he ask you to place these defendants under arrest, Captain Bramlette?

A. He did not.

Q. He did not?

A. No.

Q. Then why did you place them under arrest?

A. Because we have an ordinance against it.

[fol. 17] Q. An ordinance?

A. That's right.

Q. But you just now testified that you did not have the ordinance in mind when you went over there?

A. State law in mind when I went up there.

Q. And that isn't the ordinance of the City of Greenville, is it?

A. This supersedes the order for the City of Greenville.

Q. In other words, you believe you referred to an ordinance, but I believe you have the State Statute in mind?

A. You asked me have I, did I have knowledge of the City ordinance in mind when I went up there and I answered I did not have it particularly in my mind, I said I had the State ordinance in my mind.

Q. I see and so far this City ordinance which requires separation of the races in restaurants, you at no time had it in mind, as you went about answering the call to Kress' and placing these people under arrest?

A. In my opinion the State law was passed recently supersedes our City ordinance.

Q. I think, sir, that you may be somewhat off on that but we won't belabor the issue, because His Honor, I believe, can make a proper ruling on that. But my question, I don't want to seem repetitious but I don't believe I got a direct answer to it. So once more, sir, you did not have the Greenville ordinance which requires separation of the races in mind when you placed these defendants under arrest?

Mr. Arnold: Now, he's answered that three times.

Judge Jester: I think that one more firm answer, Captain, would suffice the record.

[fol. 18] The Witness: I had the State ordinance in mind.

By Mr. Perry:

Q. Now, Captain, I still don't want to belabor but Your Honor, I respectfully submit the answer was not responsive. I believe he is capable of a yes or no answer.

A. I had the act that was passed May of this year in my

mind an act which "provides for the offense of trespassing after warning with penalty thereafter—"

Mr. Arnold: No need to read it.

Mr. Perry: All right, sir. And do I understand that you did not have the Greenville City ordinance in mind, sir?

A. We have all ordinances in mind when we answer the call to go anywhere.

Q. But you just now admitted you didn't have this one in mind, Captain?

A. I didn't have it in mind?

Q. I seem to recall that you said it.

A. I have all ordinances in mind.

Q. So now, as I understand, you change your testimony to say that you now have this ordinance in mind?

A. I am not saying I had it in mind, I said this supersedes our City ordinance. This is the one I was acting under.

Q. And the manager of Kress' did not at any time ask you to place these defendants under arrest, did he?

A. He did not.

Q. Yet you used the power of your office to place them under arrest without being requested by the manager of Kress to do so?

A. I did.

[fol. 19] Mr. Perry: Thank you, Captain Bramlette. That's all, Your Honor.

Mr. Arnold: That's all.

(Witness excused.)

Mr. G. W. West, being duly sworn, testified as follows:

Judge Jester: You are the manager of the Kress' Store?

The Witness: Yes, sir.

Direct examination.

By Mr. Arnold:

Q. Mr. West, you are the manager of the Kress Variety Store located on the east side of South Main Street, here in the City of Greenville?

A. Yes, sir.

Q. On August 9, 1960, Tuesday of this week, did Officers Bramlette and Vaughn come into your store around 11 o'clock?

A. Yes, sir.

Q. Were any people at that time seated at the lunch counter?

A. Yes, sir.

Q. Was it of both races or just one race?

A. Both races.

Q. Both races? Did you make any statement or request to the people sitting at the lunch counter?

A. Yes, sir.

Q. What?

A. We turned out the lights at the lunch counter and requested everybody to leave, that the lunch counter was closed.

[fol. 20] Q. Everybody to leave, all right, I believe you said there were some white people sitting there, also?

A. Yes, sir, I did.

Q. Did they or not, leave immediately?

A. Yes, sir, they left.

Q. All right, these ten defendants, of the Negro race, were they sitting at the lunch counter?

A. Yes, sir, they were.

Q. When you made that request?

A. Yes, sir, they were.

Q. Did they leave?

A. No, sir, they did not.

Q. How long did they stay there before being placed under arrest, would you say?

A. I would say about five minutes, I guess.

Q. About five minutes. Were you in the process or not of roping off the lunch counter?

A. Yes, sir, we had started to, we turned out the lights.

Q. I believe you testified, did you or not, that Captain Bramlette and the other officers placed these ten defendants under arrest?

A. Yes, sir. Those ten and four others.

Q. And they were escorted from the store?

A. Yes, sir, that's right.

Mr. Arnold: Witness with you.

Cross examination.

By Mr. Perry:

Q. Mr. West, how long have you been manager of Kress' in Greenville?

A. Since February 3.

Q. I see. Have you also worked for the Kress chains in other cities?

A. Yes, sir, fifteen years.

[fol. 21] Q. Fifteen years, how long have you lived in Greenville?

A. Since February 3rd.

Q. I see, and when you came into Greenville did you learn anything about the policies of the Kress Store with regard to serving members of the public?

A. Well, I knew that before I came into Greenville.

Q. I see. I believe Kress is a very large variety store, isn't it, sir?

A. Yes, sir.

Q. I believe I learned in another city that it was called a junior department store now, is that correct?

A. That is the name it's been given to it.

Q. And Kress operates in cities practically all over the United States, doesn't it?

A. Yes, sir.

Q. I believe it is one of the largest businesses of its kind in the country?

A. Well, I wouldn't say it was one of the largest ones, no.

Q. But it is certainly not one of the smaller?

A. That's right, yes, sir.

Q. Sir, what is the policy of Kress' with regard to serving members of the public in all of its numerous departments?

Mr. Arnold: I don't see the relevancy of that, Your Honor.

Judge Jester: I don't think it deals directly with trespassing after notice but I'm going to let him put it in the record, Mr. Arnold.

By Mr. Perry:

Q. Let me put it this way, sir, approximately how many departments does Kress' have?

A. Fifteen or twenty.

[fol. 22] Q. Those fifteen or twenty departments sell about how many different commodities?

A. It's hard to estimate, probably over ten thousand items.

Q. Probably over ten thousand items?

A. Yes, sir.

Q. Are all members of the public invited into the business of Kress'?

A. Yes, sir.

Q. And all members of the public, include Negro, and white, Indians and Chinese and every other nationality, do they not?

A. Yes, sir.

Q. So that Negroes are invited in Kress' to do business?

A. That's correct.

Q. And when they come in to do business of these various items, I believe, you said over ten thousand items, is it not the policy of Kress' to serve them courteously?

A. Yes, sir.

Q. Now, I believe, Kress' also has a lunch counter area?

A. That's correct.

Q. And it likewise is operated by the Kress chain?

A. Yes, sir.

Q. What is the policy of Kress' Greenville, South Carolina, store with regard to serving Negroes and whites at its lunch counter?

A. We follow local customs.

Q. Now, sir, "we follow local customs", is that orders from your headquarters?

A. Yes, sir.

Q. It is?

[fol. 23] A. Absolutely.

Q. And you understand as the manager of Kress' assigned to Greenville and possibly in other areas that it is one of the mandates of your national organization business chain to follow local custom with reference to serving members of the public?

A. That's correct.

Q. Now, what is the local custom with regard to serving Negroes and whites at your lunch counter?

A. The local custom, that we serve whites only.

Q. I see, so that members of the Negro public who may come in by invitation of your company to buy some ten thousand other articles may not purchase a cup of coffee or any other item from your lunch counter?

A. Yes, sir.

Q. That is your policy, isn't it?

A. Yes, sir.

Q. Now, on August 9 when these young people were seated at your lunch counter, what did you do first?

A. The first thing I had one of my employees call the Police Department and turn the lights off and state the lunch counter was closed.

Q. Was this a prearranged matter, so far as your office was concerned?

Mr. Arnold: Your Honor, I don't think that's competent. He can go so far but there's one question and one question only in this case, was the State Law violated? All that leads up to it, and all is nothing it's irrelevant, is to be placed in the record, as I interpret it, purely for a prejudicial standpoint when we could stay here 'til next week.

Mr. Perry: I don't believe it's our intention to stay 'til next week.

[fol. 24] Judge Jester: Your question, Mr. Perry, was this prearranged?

Mr. Perry: Yes, sir.

Judge Jester: I don't know what your next question would be.

Mr. Perry: Your Honor, if I may, it is my purpose through this line of questioning to bring out from this witness any arrangements or agreements which the manager of Kress' and or, the managers of other like businesses might have had with the Police Department or the City of Greenville, the South Carolina Law Enforcement Division, the Sheriff of Greenville County and any other law enforcement agency. And my question, which is designed to determine from this witness as to whether or not this course of

action which he followed was prearranged, is designed to lead me into that particular area.

Judge Jester: Well, I will have to rule it out, Mr. Perry. I think that the facts that appear in any particular instance would be a minor method on which he would have to make his decision. I'd have to rule that out. I think the facts in each case would be the controlling factor in what he did. I have to rule it out.

Mr. Perry: Your Honor, may I respectfully request that you reconsider that ruling in the light of the fact that here we are raising constitutional questions and there will ultimately be presented to the Court a motion based upon the unconstitutional application of the statute involved in this case, in this line of interrogation, is relevant. And in the light of that we respectfully request then a reconsideration of your ruling.

Judge Jester: I have ruled out, I will have to rule that his acts were taken on what happened at that particular [fol. 25] time, this act that presented itself at that particular instance.

Mr. Perry: All right, sir.

By Mr. Perry:

Q. Mr. West, why did you order your lunch counter closed?

A. It's contrary to local customs and its also the ordinance that has been discussed.

Q. Do I understand then further, that you are saying that the presence of Negroes at your lunch counter was contrary to customs?

A. Yes, sir.

Q. And that is why you closed your lunch counter?

A. Yes, sir, that's right.

Q. I see, and after the police had come and taken the defendants away, did you reopen your lunch counter?

A. Yes, sir.

Q. And did you reopen it by reason of the fact that the presence of the Negroes was no longer a threat to your business?

A. Yes, sir.

Q. Do you agree with the observations of Captain Bramlette that these young people were clean and unoffensive?

A. Yes, sir. I agree with him.

Q. Do you further agree that they were not profane, and not boisterous?

A. To the best of my knowledge they were not. I didn't hear any profanity.

Q. Yet you went in their presence and stated that the place was closed?

A. Yes, sir.

[fol. 26] Q. So that when you say, "not in your presence," you are taking into account the fact that they were directly in your presence?

A. Well, there were fourteen, sir, and they were spread out down the counter, and of course, I went to a group at a time. That's why I say I don't know what the others were saying at the other end when I was speaking to the ones at the opposite end.

Q. But you don't make any statement that they were only anything but orderly, do you?

A. That's correct, yes, sir.

Q. Now, I understand that they were seated, they meaning these defendants, were seated at your lunch counter approximately five minutes before they were arrested?

A. Yes, sir.

Q. And you at no time requested Captain Bramlette and the other officers to place these defendants under arrest, did you?

A. No, I did not.

Q. That was a matter, I believe, entirely up to the law enforcement officers?

A. Yes, sir.

Q. Mr. West, had you at any time conversed with Captain Bramlette or any officer of the South Carolina Law Enforcement Division concerning the anticipated presence of Negroes to your lunch counter?

Judge Jester: Don't think that's admissible, Mr. Perry.

Mr. Perry: Of course, Your Honor, has made your ruling and I do not quarrel with the Court.

Judge Jester: Thank you.

Mr. Perry: I sincerely request, Your Honor, to reconsider ruling because under my theory there is no question [fol. 27] that the line of inquiry is quite relevant to the issue.

Judge Jester: I have to rule it out, Mr. Perry.

Mr. Perry: All right, sir. Thank you, Mr. West. One other question, may I?

Mr. Arnold: Yes, sir.

By Mr. Perry:

Q. Of course, you only came to Greenville in February?

A. Yes, sir.

Q. During that period of time I would imagine you spent a great deal of time learning your own Kress' Five and Ten Cent Store?

A. Yes, sir, that's right.

Q. But have you not also had the occasion to learn something about the City in which you recently moved to?

A. Yes, sir.

Q. Do you know the policies that are followed by other businesses such as yours with regard to this same question, that is, the serving of Negroes at lunch counters?

A. You want my opinion?

Q. Not your opinion, just your knowledge of the custom?

A. My knowledge of the custom is exactly as ours.

Q. That's what I was after, sir. Let me ask you this, sir. Approximately how many people can you seat at your lunch counter?

A. About fifty-nine.

Q. Fifty-nine?

A. Yes.

Q. And do members of the public generally, those working uptown and those perhaps in town on business come into [fol. 28] your store regularly for meals around the lunch hour?

A. Yes, sir.

Q. So that your business, you do a pretty good business in serving members of the public at lunch time?

A. Fairly good, yes, sir.

Q. The service of food is a vital service being rendered by your company, isn't it?

A. Well, it's one of the services that we perform.

Q. Your company and the other companies which are performing the same services are, as a rule, you are just about feeding the public, aren't you?

A. Yes, sir.

Mr. Perry: Thank you, sir.

Mr. Arnold: That's all, thank you. That's the City's case, Your Honor.

(Witness excused.)

Mr. Perry: Your Honor, would you see fit to grant us a two- or three-minute recess?

Judge Jester: Be glad to.

(Short recess taken.)

MOTION TO DISMISS WARRANTS AND DENIAL THEREOF

Mr. Perry: May it please the Court at this time the defendants move to dismiss the warrants against them, all of which warrants charged a violation of Act Number R896, House Bill Number 2135 of the State of South Carolina, which Act was approved by the Governor on May 16, 1960. The evidence presented on the charge shows conclusively that by arresting the defendants the officers were aiding and assisting the owners and managers of Kress' Five and Ten Cent Store, in maintaining their policies of segregating or excluding service to Negroes at its lunch counter.

Mr. Arnold: Excuse me a minute, do you want this reporter to take the argument down?

[fol. 29] Mr. Perry: Yes, sir.

Judge Jester: This is a motion she's taking?

Mr. Perry: Yes, sir, that's right.

Mr. Arnold: When you start your argument if you don't want her to take it, tell her not to.

Mr. Perry: I might say that I have no argument to make on the matter, just the substance of the motion.

Mr. Arnold: All right. Thank you.

Mr. Perry: —

Judge Jester: Your last statement was aiding and assisting the owners of the store as I recall?

Mr. Perry: Yes, sir. In maintaining their policies of segregating and excluding services to Negroes at the lunch counter on the ground of racial color, in violation of the defendants' rights to due process of law, and equal protection of the laws, under the 14th Amendment to the United States Constitution. That is the motion, there will be no argument on the motion.

Judge Jester: Motion denied, Mr. Perry.

Mr. Perry: Also, may it please the Court, at this time, the defendants move to dismiss the warrant on the ground that the warrant which charges them with trespass after warning, the designation of the act being set forth in the warrant is invalid, in that the evidence establishes merely that the defendants were peacefully upon the premises of S. H. Kress & Co. Which establishment is performing an economic function invested with the public interest as customers, visitors, business guests, or invitees, and there is no basis for the charge recited by the warrant other than an effort to exclude these defendants from the lunch counters of Kress' Five and Ten Cent Store, because of their race and color. The defendants at the same time are excluded from equal service at the preponderant number of other eating establishments in the City of Sumter, I beg [fol. 30] your pardon, I'm reading from another motion so if the Court will permit me to insert the City of Greenville.

Judge Jester: I would have done the same thing myself.

Mr. Perry: Yes, sir. In the City of Greenville, South Carolina, thereby depriving them of liberty without due process of law, and equal protection of the laws secured to them by the 14th Amendment to the United States Constitution. That is the motion, there will be no argument.

Judge Jester: Motion denied, Mr. Perry.

Mr. Perry: I have a further motion, Your Honor, with reference to the constitutionality of the statute. At this time may it please the Court, the defendants move that the warrants against them be dismissed, which warrants charge the crime of trespassing after warning. The designation of the act being set forth in the warrant under which all of these defendants, who are Negroes, were arrested and charged is on the evidence unconstitutional as applied to

the defendants, in that, it makes it a crime to be on property open to the public after being asked to leave because of race or color, in violation of the defendants' rights under the due process and equal protection clauses of the 14th Amendment to the United States Constitution. That is the motion.

Judge Jester: Motion denied, Mr. Perry.

Mr. Perry: At this time, may it please the Court, the defendants move for a dismissal on the ground that under the evidence presented the City has not established by competent evidence a *prima facie* case.

Judge Jester: Motion denied, Mr. Perry.

Mr. Perry: Very good, sir.

[fol. 31] Judge Jester: That gets all the motions in the record?

Mr. Perry: Yes, sir, it does.

Mr. Smith: The defense calls as its first witness Mr. Raymond H. Carter.

Judge Jester: I didn't catch the name, Mr. Smith.

Mr. Smith: Raymond H. Carter. C-a-r-t-e-r.

Mr. Raymond H. Carter, being duly sworn, testified as follows:

Direct examination.

By Mr. Smith:

Q. Mr. Carter, where do you live?

A. 111 Luke St., Washington Heights.

Q. In Greenville?

A. Yes, sir.

Q. How long have you lived in Greenville?

A. All my life.

Q. Are you employed here?

A. No, sir.

Q. You aren't employed?

A. No.

Q. On August 9, on or about eleven o'clock in the morning, did you have occasion to be in Kress' Five and Ten Cent Variety Store?

A. I did.

Q. On that morning were you anywhere near the lunch counter of Kress'?

A. Yes—

Q. Were you also there when the acts testified to heretofore this morning took place? You heard what has been said here already this morning?

A. No, not everything.

[fol. 32] Q. Were you there when some arrests were made of colored people sitting at the lunch counter?

A. I was.

Q. Were you there when the store was closed since you heard Mr. West testify, you heard him testify the store was closed?

A. Yes.

Q. Were you there at that time?

A. I was right there.

Q. Would you please just tell us in your own words what were your observations, what did you see and hear, during the time of the closing of that lunch counter, just give it to us in your own words?

A. Well, actually I didn't hear the manager say the lunch counter was closed, I only heard the officers and he could have said lunch counter closed but I didn't hear him. About the only thing I heard was the lunch counter was closed and you're under arrest. They didn't give the kids a chance to get up.

Q. Which officer are you referring to now, could you identify him, is he in the Court room?

A. He was the one I saw, this one, this guy right here with the paper in his hand going out the door.

Mr. Smith: May we have him identified, please.

Mr. Arnold: Mr. Hillyer.

Mr. Smith: Mr. Hillyer?

Mr. Par' : Mr. H-i-l-l-y-a-r.

Mr. Smith: I believe he is an officer of the South Carolina Law Enforcement Division, is that right?

Mr. Arnold: That is correct.

Mr. Smith: We would like the record to show your Honor that this witness pointed out Mr. Hillyer, who has

been recognized as an officer of the South Carolina Law Enforcement Division.

[fol. 33] Judge Jester: Glad to do that.

By Mr. Smith:

Q. Was that the only request that you heard for these children to leave?

A. He said lunch counter closed and the officer immediately began arrest, stand-up and line-up, you're under arrest and began searching the young men.

Q. Well, did the officer make a request that they leave?

A. No.

Q. Did you hear the request?

A. No, I didn't hear a request.

Q. Did you hear the manager, Mr. West, make a request that they leave?

A. I didn't hear Mr. West say anything, like I said before.

Q. As I understand, if such a request had been made, would they have had time to leave?

A. No.

Q. Immediately upon the statement, they were immediately placed under arrest?

A. Immediately.

Mr. Arnold: I think, Mr. Smith, you are leading the witness a little.

Mr. Smith: I'm sorry.

Judge Jester: I usually wait 'til you all object because that's not my business.

By Mr. Smith:

Q. Mr. Carter, did everyone leave the lunch counter?

A. No.

Q. Some people remained seated?

A. The white citizens.

Q. Can you identify them?

A. Well—

[fol. 34] Q. I mean as to race?

A. Yes, sir.

Q. They did not leave?

A. They didn't leave.

Q. Even after you heard the statement the lunch counter was closed?

A. Well, yes, they didn't leave.

Q. Did you observe any attempt made to arrest those white persons who refused to leave?

A. No.

Q. They were allowed to remain, that was your observation?

A. They did.

Q. Did you hear any other officer make a request?

A. Well, that one, was the only one I heard and the others I think went to his command. They all began right after he said that, searching the young men and lining them up. And I also stayed in the store and watched while they was arresting and walking out the door, the lights came back on and the whites didn't leave.

Q. They remained seated?

A. They remained seated.

Q. And is your testimony that no one made any attempt to arrest them?

A. No, sir, and I didn't see a rope to rope off the counter.

Q. You did not see a rope?

A. I did not see a rope.

Q. Did you hear anyone say "you are trespassing"?

A. I didn't hear anything about trespassing 'til they were locked up.

[fol. 25] Q. All you heard were the counter's closed and the immediately arrest even before they had, could make an attempt to get up from the stools and leave?

A. Yes, sir.

Mr. Smith: That's all.

Cross examination.

By Mr. Arnold:

Q. What is your age, please?

A. Twenty.

Q. Twenty. And you say that you are unemployed?

A. Well, at the present, yes.

Q. Are you married?
A. No.
Q. You live with your mother and father here?
A. I do.
Q. What is the last employment you had?
A. I worked for the Southern Railway, Railroad.
Q. What?
A. Mail handler for the Southern Railroad.
Q. I didn't catch the answer?
A. Mail handler.
Q. When did you leave the Southern Railroad?
A. It was the day of the accident, the wreck at Seneca. I don't recall the date.
Q. All right, did you go with these ten defendants up to Kress' Store?
A. No, I didn't. I didn't go with them, I was by myself, they was in front of me.
Q. But then you followed them?
A. Sure I followed them, that's a free street.
Q. You knew that they were going into the store?
A. Sure I knew it.
[fol. 36] Q. As a matter of fact, Mr. Carter, weren't you the leader of this group?
A. If I was the leader, I would have been arrested.
Q. I didn't ask you that.
A. Was I the leader?
Q. Yes.
A. No, I wasn't the leader.
Q. Before Officer Bramlette and Vaughn and some of the others arrived on the scene, weren't you going up and down the line where these ten defendants were sitting, talking with them?
A. Sure, I know 'em.
Q. But you didn't sit down?
A. No, I didn't.
Q. I want to ask you when you saw Captain Bramlette and some of the other officers come into the store, you kind of made yourself scarce, so to speak?
A. I was right there, they didn't see me, but I saw them.
Q. But you moved away from the vicinity of the lunch counter?

A. No, I didn't.

Q. But you didn't sit down?

A. I didn't sit down.

Q. Where were you standing when the officers were there?

A. Right next to another counter observing.

Q. Well, why couldn't the officers see you, you said they didn't see you?

A. Well, at that time, they marched the kids out.

Q. The time they marched the kids out?

A. At the time, they marched them out, I left.

Q. Did you leave by the side door or the front door?

A. The front door.

[fol. 37] Q. I want to ask you, Mr. Carter, isn't it a fact that you went into that store with the purpose of being able to come and testify in case any arrests were made?

A. No, that wasn't my purpose.

Q. What was your purpose in going in there?

A. That's a chain store and I had money in my pocket to buy something I saw.

Q. Did you buy anything?

A. No, I didn't.

Q. Did you attempt to buy anything?

A. Yes, I did.

Q. What?

A. I needed a new tip for this walking stick.

Q. Did you get it?

A. No, I didn't.

Q. Did they have it?

A. I think so, but after I saw the kids sit down that took my mind off this walking-stick. That was more interesting than my walking stick, at the present.

Q. So you didn't go to attend to your own business, but you attempted to mind somebody else's?

A. I didn't help 'em.

Q. What?

A. I didn't help 'em mind their business. I merely spoke to 'em and talked to 'em.

Q. You talked with them?

A. Yes. Anything wrong with me talking with them?

Q. I'm not being questioned. Is James Carter, one of the defendants, your brother?

A. Yes, sir.

Q. Where did you first meet up with this group, on this particular morning?

A. Where did I first meet up with them?

[fol. 38] Q. Yes.

A. Well, I didn't meet up with them, when I saw them they were going in Kress'.

Q. And you intended to go in Kress', also?

A. Sure.

Q. You followed them in?

A. Sure I did, I had a purpose for going in there, too.

Q. But you never did sit down?

A. No.

Q. Now, you say that Mr. Hillyar here, with SLED gave an order to close the lunch counter?

A. I didn't say he give the order, I said he give the order under arrest.

Q. Under arrest?

A. Yes.

Q. I understood if my recollection is correct, that you stated that he made the statement that the lunch counter is being closed?

A. I also said that I heard someone else say lunch counter closed and he said you're under arrest.

Q. Now, I believe, on Direct Examination you stated that you could not be positive whether or not, Mr. West, the store manager, made the statement, that the lunch counter —asked them to leave, request it?

A. No, I couldn't say that Mr. West said that, I didn't hear him.

Q. In other words, I understand your testimony, you don't say that he did or he didn't?

A. No.

Q. I believe you testified that James Carter, one of the defendants, is your brother?

A. Yes, sir.

[fol. 39] Q. Do you own an automobile?

A. Me?

Q. Yes?

A. No, sir.

Q. Does James own an automobile?

A. No, sir.

Q. Did you come down to headquarters to get a set of car keys from James?

A. I did.

Q. Whose car was that?

A. My mother's car.

Q. Where is it that you live?

A. Out at Washington Heights, 111 Lake St.

Q. Approximately how far is that from Kress' Store?

A. Well, I'd say, good two and a half miles.

Q. Does your brother James live with you?

A. Yes, we all live together.

Q. Did you all come to town that particular morning together in your mother's car?

A. Yes, we did.

Q. Who else was in the car with you?

A. At the time, Mrs. Jones, she's not here.

Q. Were any of these other nine defendants in the car with you that morning?

A. Yes, sir, I said Mrs. Jones.

Q. Mrs. Jones?

A. Yes.

Q. Is she a defendant here?

A. No, sir, she's not in here. She's at the Juvenile Home, or some place.

Q. She's one that's under sixteen years of age?

A. Yes.

[fol. 40] Q. And that puts three in the car, were there any more in the car?

A. That's all.

Q. At any time that morning, before the arrest, did any of these other nine defendants ride with you or your brother, James, in the car?

A. No.

Q. Where did you leave your car parked?

A. Up on Laurens Street that runs behind Woolworth and Green's, I think that's the name of the street.

Mr. Arnold: Thank you.

(Witness excused.)

Mr. Smith: Next witness, Doris Wright, one of the defendants.

DORIS WRIGHT, being duly sworn, testified as follows:

Direct examination.

By Mr. Smith:

Q. Where do you live, Miss Wright?
A. 13 Nichols Street. That's in Nicholtown.
Q. In Greenville?
A. Yes.
Q. At the present are you employed, are you a student, or what is your present—
A. I am a graduate student, I'm not employed.
Q. You're not employed at present?
A. No.
Q. I believe on the morning of August 9, at around eleven o'clock, you went into Kress' Five and Ten Cent Store?
A. That's correct.
[*fol.* 41] Q. Miss Wright, would you tell us what your purpose was in going up to Kress that morning, please?
A. I went in Kress, my main purpose was to be served.
Q. Served where?
A. At the lunch counter.
Q. At the lunch counter? You then went into Kress' with the intention of getting some lunch, or coffee or something like that?
A. Yes.
Q. Did you make a request to be served?
A. I did.
Q. After sitting at the lunch counter?
A. I did.
Q. What was the reply to your request?
A. "I'm sorry, we don't serve Negroes."
Q. Sorry, we don't serve Negroes?
A. Yes.
Q. Were there other people sitting at the counter at that time, Miss Wright?
A. They were.

Q. Were they being served?

A. They were.

Q. Did they continue to serve them?

A. Well, they continued to serve the orders that had been placed, but they didn't, no new orders were made.

Q. No new orders were made?

A. No, no more.

Q. The request or order that the store is closed, was it made at the time that you were there?

A. Yes, it was.

Q. How long had you been seated at the lunch counter before the order, that the lunch counter is closed, was made? [fol. 42] A. We had been sitting at the counter approximately three minutes.

Q. Do you remember what person told you or relayed the order to you that the lunch counter was closed?

A. Well, no, I heard a voice say that "the lunch counter was closed, you're under arrest," and I forgot his name over there, he made the order that the counter was closed and that we were under arrest. Mr. West, did not make the request because he was coming from the back at the time, at the time the arrests were being made.

Q. You pointed over there, who were you pointing at?

A. In the brown suit there, whatever color it is, I can't see from here.

Mr. Smith: Your Honor, I believe that's Mr. Hillyar, would you let the record also show that this witness pointed out Mr. Hillyar of the South Carolina Law Enforcement Division as the person who gave that order?

By Mr. Smith:

Q. Now, the way you just testified, as if the order and the arrest were all in one sentence?

A. It was, in one breath.

Q. No pause?

A. No pause.

Q. As I understand the order was, the lunch counter is closed, you're under arrest?

A. That's right.

Q. And were you immediat ly placed under arrest?

A. We were.

Q. Were you given any opportunity to leave if you'd wanted to, Miss Wright?

A. No.

[fol. 43] Q. Did you observe the lunch counter at all after your arrest, as to whether or not, everybody left the lunch counter?

A. Well, I couldn't say because Officer Wall and the policemen in the back there, they got four girls and put us in a car and immediately carried us down to headquarters. We left the boys and two other girls in the store, they were searching the boys, they were searching the boys in the car.

Q. So you were not able to observe as to whether or not the other people at the counter left or not?

A. No.

Q. Miss Wright, I want to ask you this question, did you expect to be served at Kress on that morning?

A. Well, I had talked with the manager earlier, during some other demonstrations and he had stated that the pressure that was being put on him by our demonstrations. And I also asked him a question, if he would press charges against us, if we would continue coming and he said, no, and also, I went back to the counter since so much pressure is on him, maybe he will break as he is done, as they were serving us in other parts of the store. Maybe he will be willing to serve us at the lunch counter, too.

Q. Then did you expect to be served?

A. Yes, I did.

Q. Did you feel that you had a right to be served?

A. Yes, I did.

Q. That was your purpose for being there that day?

A. That's right.

Mr. Smith: Your witness.

[fol. 44] Cross examination.

By Mr. Arnold:

Q. You referred to other demonstrations, how many times previous to this, had you been to the store and sat down at the lunch counter?

A. I don't recall, it has been several times.

Q. Some three or four?

A. I wouldn't some three or four, I would say it has been several times.

Q. Several times?

A. Yes.

Q. Now several, you mean two?

A. One or more, yes.

Q. One couldn't be several, could it?

A. No, so it would be one or more, could be two, I couldn't vouch for three.

Q. How many in this group of ten defendants were with you on prior occasions going to Kress' Stores, if you can recall, approximately?

A. I would say two to three.

Q. Two to three?

A. Yes.

Q. Where did you ten meet that morning?

A. We didn't.

Q. You mean all ten of you just happened to gather up at Kress'?

A. I didn't say we happened there, I said we didn't meet.

Q. If you didn't happen there, then what did you do, just explain to the Court?

A. Well, I mean, since the curfew and everything, we thought the managers thought we were afraid of our fight for freedom, and our privileges, so we telephoned, when I [fol. 45] say we, I telephoned and other defendants telephoned and we decided we would go get us some coffee. I don't know whether Jim was coming up town, I guess he wanted some coffee, too. I mean, 'cause my pocketbook, I couldn't buy anything else but coffee or soda.

Q. Where is it you live?

A. Nicholtown, 13 Nichol Street.

Q. How did you get to town that morning, in a car or on a bus?

A. I rode the City bus.

Q. Rode the City bus? Did any of these other ten defendants accompany you on the bus that morning?

A. No, they didn't.

Q. But you all did meet there in front of Kress'?

A. No, we didn't.

Q. Where?

A. We didn't meet.

Q. Well, let me ask you this, didn't the ten of you go in the store, more or less, as a group?

A. No, we didn't.

Q. You went in singular?

A. No, we didn't. I don't know how they come, I went in Kress.

Q. Was—

A. I was accompanied by one.

Q. Let me ask you, were any of these other nine defendants already sitting down at the counter when you got into the store?

A. No, they weren't.

Q. You were the first one?

A. Yes, I was.

Q. Now, who was with you?

A. Helen Rose, Helen Evans.

[fol. 46] Q. She's a defendant here?

A. Yes.

Q. Was anyone else with you?

A. No.

Q. How long would you say it was after you all sat down before the eight other defendants came and sat down?

A. It may have been a minute or so.

Q. A minute or so? Well, then, they must have been in the vicinity of Kress' Store?

A. I couldn't say.

Q. All right, you say you all went in there to get some coffee, or to served at the lunch counter?

A. Uh huh.

Q. Can you explain to the Court how these four that had no money could be expected to be served, had no money on their person?

A. Beg your pardon, sir.

Q. These four that Officer Bramlette testified had no money on their person when they were arrested, could you give the Court an explanation as to how they could expect to be served any food or coffee?

A. I imagine they could expect to be served by the waitress, by the waitresses.

Q. But you know it's a matter of common knowledge you don't go into a store and order coffee or food when you don't have any money on your person?

A. I didn't say that they ordered, I said that I ordered.

Q. My question to you, can you offer any explanation to the Court, as how these four that had no money on their persons could have expected to be served food or coffee?

A. No, I don't.

[fol. 47] Q. And you deny that Mr. West made any request to you, to leave?

A. I do.

Q. Did you hear Mr. West say anything?

A. No.

Q. Of course, you are not in position to say whether or not Mr. West may have made a request to some of the other nine?

A. Yes, I am, Mr. West, come from the back of the store, at the time we were being arrested and were told that the lunch counter was closed.

Mr. Arnold: Thank you.

Mr. Smith: Just one minute, one or two questions on Redirect, Your Honor.

Redirect examination.

By Mr. Smith:

Q. First, Miss Wright, I would like to ask you, if you and all your co-defendants, all of you that were arrested that morning, are all of you Negroes?

A. We are.

Q. No white people among them, in that arrest?

A. No.

Q. You have testified here this morning as to the amount of money that each of you, you and your co-defendants, had upon their person and their pockets. Wouldn't it be customary for some of the—

Mr. Partee: That's leading.

Judge Jester: I don't believe I can go along if I'm interpreting your question, Mr. Smith.

Mr. Smith: I believe, I may have started it as being leading, Your Honor, but what I'm after, I believe is admissible. [fol. 48] Judge Jester: Now, if it isn't, I'm going to strike it out. Go ahead, if it isn't, I'm going to strike it out.

Mr. Arnold: Tell the witness not to answer until the Court has ruled.

Judge Jester: Go ahead and ask her but tell her not to answer, I'll ask Doris not to answer until I have ruled.

By Mr. Smith:

Q. I will ask you whether or not it is customary in a group of friends like that for one to pay for whatever another may order, or what two or three may order?

Judge Jester: I'll have to rule that out on account of her previous statement there.

Mr. Smith: All right, that's all.

Mr. Perry: One other witness, please, sir. Your Honor, we would like to call Officer Hillyer of the South Carolina Law Enforcement Division and we presume that by reason of the fact that he is an officer of the South Carolina Law Enforcement Division, that he is hostile and we ask permission to treat him as a hostile witness.

Mr. Partee: Your Honor, I would think that would necessarily be true. He's merely enforcing the law which is any law enforcement officers are—

Judge Jester: I couldn't consider him as a hostile witness, Mr. Perry.

Mr. Perry: I know him quite well, I think he's a very fine gentleman but in this matter—

Judge Jester: He is a law enforcement officer, but I'm a Judge and I'm not a hostile Judge.

Mr. Perry: Not at all.

Judge Jester: I think every darky that's ever been in and sat before me said I done them as fair as anybody else [fol. 49] but I can't say that because I'm working for the City that I'm hostile, so I couldn't go along with you. I'll allow you to call him but I will not put into the record that he is a hostile witness.

Mr. Perry: Well, if at any point in his testimony it develops that he is hostile perhaps Your Honor will reconsider. We ask that Officer Hillyer come to the stand.

Mr. O. R. Hillyer, being duly sworn, testified as follows:

Direct examination.

By Mr. Perry:

Q. Mr. Hillyer, I believe you are an officer of the South Carolina Law Enforcement Division?

A. That's right.

Q. How long have you been working for the agency, sir?

A. Four years and two months.

Q. Do you hold any official position in the office, or are you what is known as patrolman?

A. I'm an agent.

Q. You are an agent?

A. We don't have patrolmen.

Q. I see. What are the general duties of an agent, may I ask?

A. An agent of the South Carolina Law Enforcement Division is set up as an assistant agency to help any police or sheriff's office that needs any assistance that we can render, and we render any assistance we can render.

Q. I see, and who do you receive your orders from?

A. Chief J. P. Strom.

[fol. 50] Q. I see, and Chief J. P. Strom is the head of the South Carolina Law Enforcement Division?

A. That is correct.

Q. May I ask you, sir, who does Chief Strom take his orders from?

A. Governor Hollings.

Q. I see, so when Chief Strom's men go into action, why generally speaking the Governor of the State is more or less, his attitude is reflected by what he would do. On the occasion in question, namely August 9, at which time it has been testified that these defendants were arrested, were you present at Kress' Five and Ten Cent Store?

A. I was present at Kress'.

Q. I see. Were other agents of the South Carolina Law Enforcement Division present?

A. Yes, they were.

Q. Did you render any assistance to the Chief of Police or the other local law enforcement officers on this occasion?

A. I checked a few of the boys, a few of the defendants, I shook them down.

Q. Did you confer with Captain Bramlette concerning the charge which would be placed against them?

A. No, sir, I did not.

Q. Did you any way assist in effecting the arrest?

A. You'll have to ask that another way. I was there to assist Captain Bramlette or any other policeman.

Q. I see, and my question was, did you assist?

A. Yes.

Q. I see. Thank you, sir.

Mr. Perry: You may examine.

[fol. 51] Cross examination.

By Mr. Partee:

Q. Mr. Hillyer, i believe, you were in the store before Captain Bramlette and Officer Vaughn, perhaps some other officers arrived?

A. I was.

Q. Who gave the order or made the request for the defendants to leave the store?

A. Mr. West. Mr. West, told th m the store was closed, the lungh counter was closed.

Q. Was he in a position and was his voice loud enough for these ten defendants to have heard him?

A. Yes, sir.

Q. After he made that request, what happened?

A. After Mr. West said the lunch counter was closed, the defendants just remained seated, and a few minutes after he had made the request Captain Bramlette said "you are under arrest."

Q. Captain Bramlette is the one who put them under arrest?

A. That's correct, sir.

Q. Did you put any of them under arrest?

A. No, sir, Captain Bramlette ordered placed them under arrest.

Q. Did you at any time say "the lunch counter is closed, you're under arrest"?

A. I did not.

Q. Now, there's been testimony that the request order to leave and the arrest was simultaneous, is that true or not?

A. That is not true.

[fol. 52] Q. Now, after Mr. West said the lunch counter is closed, did he also say "you are requested to leave or everybody leave the counter" or anything like that?

A. He said "the lunch counter is closed, everybody leave" but the defendants didn't move.

Q. There's no doubt in your mind they all heard it?

A. No doubt in my mind they all heard it.

Mr. Partee: Thank you, sir.

Mr. Perry: Just one more question. Now, as I understand it, in response to these questions you stated that Captain Bramlette made the arrest, that as I understood your earlier testimony, you did render assistance to Captain Bramlette?

The Witness: That's correct.

Mr. Perry: Very good, sir. I think that's all.

(Witness excused.)

Mr. Perry: Your Honor, that's the defendant's case.

Mr. Arnold: We have nothing in reply.

Renewal of Motions and Denial Thereof

Mr. Perry: At this time, may it please the Court, the defendants would like to renew all motions for dismissal which were made at the conclusion of the City's case and we would like to renew them in this manner as if repeated again in their entirety. My purpose being to expedite these proceedings.

Mr. Arnold: We are willing to agree to that, we ask that they be reproduced in the record as if so done.

Judge Jester: Motion so denied.

Mr. Perry: I would like, at this time, to make this additional motion which is to be appended to the motions which were made at the conclusion of the City's case. At this time, the defendants move for a dismissal of these cases which charged these defendants, all of whom are Negroes, with the violation of the statute which is set forth in the warrant, on the ground that the Negroes, the Negro de- [fol. 53] fendants, were arrested and charged under a statute which is itself unconstitutional on its face, by making it a crime to be on public property after being asked to leave by an individual, at such individual's whim. In that, such statute does not require that the person making the demand to leave, present documents or other evidence of possessing a right sufficient to apprise the defendants of the validity of the demand to leave. All of which renders the statute so vague and uncertain, as applied to the defendants, as to violate their rights under the due process clause of the 14th Amendment to the United States Constitution, that is the motion, no argument on that, sir.

Judge Jester: Motion denied, Mr. Perry.

Mr. Perry: All right, sir. May it please the Court for whatever it's worth, we should like to have placed in evidence the ordinances of the City of Greenville, Section 31-B as amended. We should like very much to have, Your Honor, consider that as a part of the evidence in this case, and we make this observation that although the warrant does not cite that particular ordinance, Captain Bramlette stated in his testimony that he had this and all the ordinances of the City of Greenville and the statutes of the State of South Carolina affecting this situation in his mind. We would, therefore, like to have this ordinance included in the evidence.

Mr. Arnold: Your Honor, to identify, Mr. Perry, Section 31-B of the 1953 Greenville City Code as amended.

Mr. Perry: Thank you.

Mr. Arnold: We can't see the relevancy of it, it's just encumbering the record, there's no charge on it.

[fol. 54] Judge Jester: I'd have to deny it because I'm trying this case purely on those facts and the substance thereof, of the ac as set forth in the warrant on the arrest.

Mr. Perry: All right, sir. The defendants will agree to waive any final argument before judgment, if that is acceptable to the City.

Mr. Arnold: We agree to that, Your Honor.

Judge Jester: Let the record so show that both the Defendants and the City waive the arguments and places the case in the hands of the Recorder, is my understanding.

Mr. Perry: Beg your pardon?

Judge Jester: That's my understanding, no argument.

Mr. Perry: I might say depending on whatever ruling we may have one or two observations that we would like to make.

SENTENCE

Judge Jester: Sentence of the Court that James Richard Peterson, James Carter, David Ralph Strawder, Frank G. Smith, Robert Crockett, Joan Yvonne Eddy, Helen Angela Evans, Harold James Fowler, Doris Wright, Rose Marie Collins, pay a fine of $100.00, or serve a sentence of thirty days.

Mr. Perry: May it please the Court, at this time, the defendants each move for arrest of judgment or in the alternative for a new trial.

(Off the record.)

Mr. Perry: The defendants based upon all motions and all grounds used in said motions both at the beginning of this proceeding, at the end of the presentation of the City's case, and at the end of the defendant's case, we move for arrest of judgment or in the alternative a new trial based upon all those grounds and we ask that they be stated in [fol. 55] the record, in the new form, that is motion for arrest of judgment or alternative for new trial.

Mr. Arnold: We have no objection to that form. In other words, there's no need to encumber the record by repeating it.

Mr. Perry: Very good, sir.

Judge Jester: All right.

Mr. Perry: At this time, may it please the Court, the defendants each give verbal notice of appeal and we state to the Court that within the period required by statute we would tender the formal written notice incorporating our exceptions and we ask that the Court set an appeal binder in this matter.

Judge Jester: Two hundred-dollar bond in each case, Mr. Perry, same they have up now, an appeal bond, and if necessary, do you need a little time? I think Mr. Arnold will be glad to give you additional time in which to get up the appeal and file all the papers. I think the appeal is ordinarily gotten up in twenty-four hours and if he needs a little extra time, there's no objection to that.

Mr. Arnold: Counsel of the parties have just agreed, subject to Your Honor's approval, that the appearance bonds signed on August 9, 1960, by Mr. M. B. Tolbert for each of the ten defendants in the amount of $200.00 be considered and continued as an appeal bond without the necessity of formally re-executing the bonds, is that agreeable with opposing Counsel?

Mr. Smith: That's agreeable.

Mr. Perry: That's agreeable.

Mr. Arnold: I think that the Bondsman might have to be sworn.

[fol. 56] M. B. Tolbert, being duly sworn, testified as follows:

Direct examination.

By Mr. Arnold:

Q. Do you agree to continue the ten appearance bonds each in the amount of $200.00 that you have signed for each of these ten defendants on August 9, 1960, to be continued and considered as an appeal bond and that your liability will remain $200.00 each on said bond.

A. Yes, I do.

Mr. Arnold: You think that's sufficient?

Mr. Smith: That's fine.

Mr. Perry: Thank you very much.

(Witness excused.)

Judge Jester: Thank you, gentlemen. Court adjourned.

(Court adjourned at 10:50 a. m.)

SEC. 31-8, CODE OF GREENVILLE, 1953, AS AMENDED

Sec. 31-8, Code of Greenville, 1953, as amended by 1958 Cumulative Supplement.

It shall be unlawful for any person owning, managing or controlling any hotel, restaurant, cafe, eating house, boarding house or similar establishment to furnish meals to white persons and colored persons in the same room, or at the same table, or at the same counter; provided, however, that meals may be served to white persons and colored persons in the same room where separate facilities are furnished. Separate facilities shall be interpreted to mean:

(a) Separate eating utensils and separate dishes for the serving of food, all of which shall be distinctly marked by some appropriate color scheme or otherwise;

[fol. 57] (b) Separate tables, counters or booths;

(c) A distance of at least thirty five feet shall be maintained between the area where white and colored persons are served;

(d) The area referred to in subsection (c) above shall not be vacant but shall be occupied by the usual display counters and merchandise found in a business concern of a similar nature;

(e) A separate facility shall be maintained and used for the cleaning of eating utensils and dishes furnished the two races. (Code 1953, Sec. 31-8, Ord. No. 9, Sec. 1.)

IN THE GREENVILLE COUNTY COURT

ORDER—March 17, 1961

This is an appeal to this Court from the Recorder's Court of the City of Greenville.

The Defendants were tried on August 11, 1960, in the Greenville City Recorder's Court before the Recorder, John V. Jester, upon a charge of violating the Act of May 20, 1960, which in substance makes any person a trespasser who refuses to leave the premises of another immediately upon being requested to leave.

The Act is very simple and plain in its language.

It appears that on August 9, 1960, the ten Defendants, who are making this appeal, with four other young Negro youths went to the store of S. H. Kress and Company and seated themselves at the lunch counter at that store. At the trial there seemed to be some attempt to minimize the evidence of the officers involved as to whether or not the Defendants, now Appellants, refused to leave the premises immediately upon the request of the store manager that they should leave. However, in the argument of the chief counsel for the Appellants, all question of doubt in this respect is resolved in favor of the City. According to the written Brief of the Defendants, the Defendants now [fol. 58] "seated themselves at the lunch counter where they sought to be served. They were not served and, in fact, were told by the management that they could not be served and would have to leave. The Defendants refused to leave and remained seated at the lunch counter."

The act clearly makes it a criminal offense for any person situated as the Defendants were to refuse or fail to "*immediately*" depart upon request or demand.

Therefore, the main question before this Court is whether or not the Appellants were lawfully tried on a charge of violating this Act by refusing to leave the lunch counter immediately when requested to do so.

In the oral argument counsel for the Appellants seemed to reply in a vague manner upon an "unconstitutional application" of the Statute.

As the Court views the statute it was merely a statutory enlargement and re-enactment of the common law in South

Carolina which has been recognized for more than a half century to the effect that when a property owner, whether it be a dwelling house or place of business, has the right to order any person from the premises whether they be an invitee or an uninvited person. This principle of law was fully and clearly reaffirmed by the Supreme Court of South Carolina in the recent case of *State v. Starner et al.*, 49 S. E. (2d) 209.

For scores of years South Carolina has had a number of Statutes with reference to the law of trespass. They are now embodied as Article 5, Code of 1952, embracing Sections 16-381 to 16-394. Section 17-386 particularly refers to trespasses after notice.

Therefore, the Act of May 20, 1950, now designated in the 1952 Code as Sec. 17-388 is the controlling factor here. There can be no doubt that the field into which the Legisla-
[fol. 59] ture entered by the enactment of this particular law was a well recognized portion of the law of the State of South Carolina. The Constitutionality of the Act cannot be questioned.

Every presumption will be made in favor of the Constitutionality of a statute. There are more than fifty decisions by the Supreme Court of South Carolina to this effect. The United States Supreme Court in many cases has recognized that there is a presumption in favor of the constitutionality of an Act of Congress or of a State or Municipal legislative body. In the case of *Davis v. Department of Labor*, 317 U. S. 255, 87 Law Ed. 250, the United States Supreme Court held that there is a presumption of constitutionality in favor of State statutes. Time and time again the Supreme Court of South Carolina has held "the law is well settled that the burden is on the person claiming the Act to be unconstitutional to prove and show that it is unconstitutional beyond a reasonable doubt". *McCollum v. Snipes*, 49 S. E. 12, 213 S. C. 254.

In 16 C. J. S. 388, we find this language "Statutes are presumed to be valid and a party attacking a statute as unconstitutional has the burden of proof". Over five hundred decisons from all over the United States are cited to support this statement of the law.

The argument of counsel for the Appellants failed to raise a single serious question as to the constitutionality of the statute.

Counsel for Appellants insisted upon the right of the Defendants to adduce evidence of some alleged conspiracy or plan on the part of the officers of the law and store management to bring about this prosecution. We think the sole issue in the Recorder's Court was whether or not the Defendants were guilty of violating the Act in question. They now boldly admit through counsel that they defied [fol. 60] the management of the store and refused to leave when requested. Had they departed from the store immediately, as the law requires they should have, there would have been no arrest, but apparently in accordance with a preconceived plan they all kept their seats and defied the management and refused to leave the premises.

Evidence of any other motive on the part of the management would have thrown no light on this case.

In my opinion the appeal should be dismissed because the prosecution was conducted under a valid constitutional statute and in addition the appeal should be dismissed upon the ground that S. H. Kress and Company had a right to control its own business. We think this position is fully sustained under the recent case of *William* v. *Johnson*, Res. 344, 268 Fed. (2d) 845, and the North Carolina case of *State* v. *Nelson*, decided January 20, 1961, and reported in 118 S. E. (2d) at page 47.

I carefully considered all the exceptions made by the Appellants and I am unable to sustain any of them. It is, therefore,

Ordered, adjudged and decreed that the Appeal be dismissed.

James H. Price, Special Judge, Greenville County Court.

March 17, 1961.

[fol. 61]

IN THE GREENVILLE COUNTY COURT

NOTICE OF INTENTION TO APPEAL—March 21, 1961

To Messrs. W. H. Arnold and H. F. Partee, Attorneys for the City of Greenville:

You will please take notice that the defendants above named intend to and do hereby appeal to the Supreme Court of South Carolina from the Order of the Greenville County Court in the above matter, dated March 17, 1961, the case and exceptions to be hereafter served upon you.

Willie T. Smith, Jr., Lincoln C. Jenkins, Jr.,
Matthew J. Perry, Attorneys for Defendants.

March 21, 1961.

Due and legal service of the foregoing Notice is accepted this 22 day of March, 1961.

H. F. Partee, City Attorney.

IN THE GREENVILLE COUNTY COURT

EXCEPTIONS

1. The Court erred in refusing to hold that the warrant is vague, indefinite and uncertain and does not plainly and substantially set forth the offense charged, thus failing to provide appellants with sufficient information to meet the charges against them as is required by the laws of the State of South Carolina, in violation of appellants' rights to due process of law, secured by the Fourteenth Amendment to the United States Constitution.

2. The Court erred in refusing to hold that the State failed to establish the *corpus delicti*.

3. The Court erred in refusing to hold that the State failed to prove a *prima facie* case.

[fol. 62] 4. The Court erred in refusing to hold that the evidence of the State shows conclusively that by arresting

appellants the officers were aiding and assisting the owners and managers of S. H. Kress and Company in maintaining their policies of segregating or excluding service to Negroes at their lunch counters on the ground of race or color, in violation of appellants' rights to due process of law and equal protection of the laws, secured by the Fourteenth Amendment to the United States Constitution.

5. The Court erred in refusing to hold that the evidence establishes merely that the appellants were peacefully upon the premises of S. H. Kress and Company, an establishment performing an economic function invested with the public interest as customers, visitors, business guests or invitees, and that there is no basis for the charge recited by the warrants other than an effort to exclude appellants from the lunch counter of said business establishment because of their race and color, thereby depriving appellants of liberty without due process of law and equal protection of the laws, secured by the Fourteenth Amendment to the United States Constitution.

6. The Court erred in refusing to hold that the statute appellants are alleged to have violated, to wit: Act No. 743 of the Acts and Joint Resolutions of the General Assembly of South Carolina for 1960 (R 896, H 2135), is unconstitutional on its face by making it a crime to be on public property after being asked to leave by an individual at such individual's whim and does not require that the person making the demand to leave present documents or other evidence of possessory right sufficient to apprise appellants of the validity of the demand to leave, all of which renders the statute so vague and uncertain as applied to [fol. 63] appellants as to violate their rights under the due process clause of the Fourteenth Amendment to the United States Constitution.

7. The Court erred in refusing to permit defendants' counsel to elicit relevant testimony concerning cooperation of Store Managers and Police in the City of Greenville, South Carolina in pursuing the store managers' policies, customs and practices of segregating or excluding Negroes from their lunch counters.

IN THE GREENVILLE COUNTY COURT

AGREEMENT AS TO RECORD

It is hereby stipulated and agreed by and between counsel for the appellants and respondent that the foregoing when printed, shall constitute the Transcript of Record herein and that printed copies thereof may be filed with the Clerk of the Supreme Court and shall constitute the Return herein.

W. H. Arnold, Greenville, S. C., H. F. Partee, Greenville, S. C., Attorneys for Respondent.

Jenkins & Perry, Columbia, S. C., By Matthew J. Perry, Willie T. Smith, Jr., Greenville, S. C., Attorneys for Appellants.

[fol. 64]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

CITY OF GREENVILLE, Respondent,

v.

JAMES RICHARD PETERSON, YVONNE JOAN EDDY, HELEN ANGELA EVANS, DAVID RALPH STRAWDER, HAROLD JAMES FOWLER, FRANK G. SMITH, ROBERT CROCKETT, JAMES CARTER, DORIS DELORES WRIGHT and ROSE MARIE COLLINS, Appellants.

Appeal From Greenville County
James H. Price, Special County Judge

Case No. 4761

OPINION No. 17845—Filed November 10, 1961

Affirmed

Jenkins & Perry, of Columbia, and Willie T. Smith, Jr., of Greenville, for appellants.

W. H. Arnold and H. F. Partee, both of Greenville, for respondent.

TAYLOR, C. J.: Defendants were convicted of the charge of trespass after notice in violation of Section 16-388, Code of Laws of South Carolina, 1952, as amended, and appeal. By agreement of counsel, all bail bonds were continued in effect pending disposition of this appeal.

On August 9, 1960, in response to a call, law enforcement officers were dispatched to the S. H. Kress Store in Greenville, South Carolina, a member of a large chain of stores operated throughout the United States and described as a junior department store. Upon arrival they found the ten defendants and four others who were under sixteen years of age, all Negroes, seated at the lunch counter. There is testimony to the effect that because of the local custom to serve white persons only at the lunch counter the manager of the store announced that the lunch counter was closed, the lights were extinguished, and all persons were requested to leave. The white persons present left, but all Negroes refused to leave; and those above the age of sixteen were thereupon charged with trespass after notice as provided in the aforementioned section of the Code, which provides:

"Any person:

"(1) Who without legal cause or good excuse enters into the dwelling house, place of business or on the premises of another person, after having been warned within six months preceding, not to do so or

"(2) Who, having entered into the dwelling house, place of business or on the premises of another person without having been warned within six months not to do so, and fails and refuses, without good cause or excuse, to leave immediately upon being ordered or requested to do so by the person in possession, or his agent or representative,

"Shall, on conviction, be fined not more than one hundred dollars, or be imprisoned for not more than thirty days."

Defendants contend, first, error in refusing to dismiss the warrant upon the ground that the charge contained therein

was too indefinite and uncertain as to apprise the defendants as to what they were actually being charged with. [fol. 65] Defendants were arrested in the act of committing the offense charged, they refused the manager's request to leave after the lunch counter had been closed and the lights extinguished; and there could have been no question in defendants' minds as to what they were charged with. Further, there was at that time no claim of lack of sufficient information, and upon trial there was no motion to require the prosecution to make the charge more definite and certain. Defendants rely upon State v. Randolph, et al., —— S. C. ——, 121 S. E. (2d) 349, where this Court held that it was error to refuse defendants' motion to make the charge more definite and certain in a warrant charging breach of the peace. It was pointed out in that case that breach of the peace embraces a variety of conduct and defendants were entitled to be given such information as would enable them to understand the nature of the offense. This is not true in instant case where the charges were definite, clear and unambiguous; further, no motion was made to require the prosecution to make the charge more definite and certain. There is no merit in this contention.

Defendants next contend that their arrest and conviction was in furtherance of a custom of racial segregation in violation of the Fourteenth Amendment to the Constitution of the United States.

Defendants entered the place of business of the S. H. Kress Store and seated themselves at the lunch counter, they contend, for the purpose of being served, although four of them had no money and there is no testimony that such service was to be paid for by others.

The testimony reveals that the lunch counter was closed because it was the custom of the S. H. Kress Store in Greenville, South Carolina, to serve whites only and after all persons had left or been removed the lunch counter was reopened for business. The statute with no reference to segregation of the races applies to "Any person: * * * Who fails and refuses without cause or good excuse * * * to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative, * * * " The act makes no reference to race or

color and is clearly for the purpose of protecting the rights of the owners or those in control of private property. Irrespective of the reason for closing the counter, the evidence is conclusive that defendants were arrested because they chose to remain upon the premises after being requested to leave by the manager.

Defendants do not attack the statute as being unconstitutional but contend that their constitutional rights were abridged in its application in that they were invitees and had been refused service because of their race. The cases cited do not support this contention while there are a number of cases holding to the contrary. See Hall v. Commonwealth, 188 Va. 72, 49 S. E. (2d) 369, 335 U. S. 875, 69 S. Ct. 240, 93 L. Ed. 418; Henderson v. Trailway Bus Company, D. C. Va., 194 F. Supp. 423; State v. Clyburn, 247 N. C. 455, 101 S. E. (2d) 295; State v. Avent, 253 N. C. 580, 118 S. E. (2d) 47; Williams v. Howard Johnson Restaurant, 4 Cir., 268 F. (2d) 845; Slack v. Atlantic White Tower System, Inc., D. C. Md., 181 F. Supp. 124, 4 Cir., 284 F. (2d) 746; Griffin v. Collins, D. C. Md., 187 F. Supp. 149; Wilmington Parking Authority v. Burton, Del., 157 A. (2d) 894; Randolph v. Commonwealth, —— Va. ——, 119 S. E. (2d) 817. The Fourteenth Amendment erects no shield against merely private conduct, however discriminatory or wrongful, Shelley v. Kraemer, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A. L. R. (2d) 441; and the operator of a privately owned business may accept some customers and reject others on purely personal grounds in the absence of a statute to the contrary, Alpaugh v. Wolverton, 184 Va. 943, 136 S. E. (2d) 906. In the absence of a statute forbidding discrimination based on race or color, the operator of a privately owned place of business has the right to select the clientele he will serve irrespective of color, State v. Avent, 253 N. C. 580, 118 S. E. (2d) 47. Although the general public has an implied license to enter any retail store the proprietor or his agent is at liberty to revoke this license at any time and to eject such individual if he refuses to leave when requested to do so, Annotation 9 A. L. R. 379; Annotation 33 A. L. R. 421; Brookside-Pratt Mining Co. v. Booth, 211 Ala. 268, 100 So. 240, 33 A. L. R. 417; and may lawfully forbid any and all persons, regardless of

reason, race or religion, to enter or remain upon any part of his premises which are not devoted to public use, Henderson v. Trailway Bus Company, 194 F. Supp. 426.

[fol. 66] The lunch counter was closed, the lights extinguished, and all persons requested to quit the premises. Defendants refused and their constitutional rights were not violated when they were arrested for trespass.

Upon cross-examination of Capt. G. O. Bramlette of the Greenville City Police Department, it was brought out that the City of Greenville has an ordinance making it unlawful for any person owning, managing, or controlling any hotel, restaurant, cafe, etc., to furnish meals to white persons and colored persons except under certain conditions; and Defendants contend that they were prosecuted under this ordinance; however, the warrant does not so charge and there is nothing in the record to substantiate this contention. The ordinance was made a part of the record upon request of defendants' counsel but defendants were not charged with having violated any of its provisions. The question of the validity of this ordinance was not before the trial Court and therefore not before this Court on appeal.

Defendants further contention that the prosecution failed to establish the corpus delicti is disposed of by what has already been said.

We are of opinion that the judgment and sentences appealed from should be affirmed; and It Is So Ordered. Affirmed.

Oxner, Legge, Moss and Lewis, JJ., concur.

[fol. 68]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

[Title omitted]

PETITION FOR REHEARING

To the Honorable Chief Justice and Associate Justices of the Supreme Court of South Carolina:

Petitioners, James Richard Peterson, Yvonne Joan Eddy, Helen Angela Evans, David Ralph Strawder, Harold James

Fowler, Frank G. Smith, Robert Crockett, James Carter, Doris Delores Wright and Rose Marie Collins, respectfully request a rehearing in the above entitled case. We respectfully submit that this Court, in affirming the judgment of the Court below, may have overlooked or misapprehended certain facts and rules of law, urged by petitioners in their appeal.

1. The Court may have overlooked the fact that the Manager of Kress' did not close his store premises on the day petitioners were arrested, and testified that he closed the lunch counter only because of petitioners' presence, moreover, he reopened the counter as soon as petitioners [fol. 69] were removed from the premises. It thus does not appear that there was an actual closing of the premises and the Manager was apparently only cooperating with the police.

2. The Court may have overlooked the testimony of Captain Bramlette (Tr. pp. 9-10, ff. 33-37) and of Mr. West, the store manager (Tr. p. 25, ff. 97-98) that their acts on the day petitioners were arrested were motivated in part by Section 31-8, Code of the City of Greenville, which requires segregation of the races in eating establishments. Given the consideration urged by petitioners, it becomes apparent that though they were prosecuted in the name of trespass, their arrests and convictions were based upon their attempted use of eating facilities reserved by custom for white persons. Further, petitioners were welcomed as business invitees in all other departments of the store and could have purchased any part or all of more than ten thousand items which the store offered for sale.

3. The Court may have misapprehended that Section 16-388, Code of Laws of South Carolina for 1952, was invoked against petitioners in this case solely for the purpose of preserving and furthering the custom of excluding Negroes from Lunch Counters in Greenville, South Carolina or segregating them in same, in violation of petitioners' rights to due process of law and equal protection of the laws, protected by the Fourteenth Amendment to the United States Constitution.

4. The Court may have overlooked petitioners' assertion that they were unwarrantedly penalized for exercising their freedom of expression in violation of the Fourteenth Amendment. The Court further overlooked the applicability of *Marsh* v. *Alabama*, 326 U. S. 501, 90 L. Ed. 265, 66 S. Ct. 276, and *Munn* v. *Illinois*, 94 U. S. 113, 24 L. Ed. 77, to this argument.

[fol. 70] 5. The Court may have overlooked petitioners' assertion that in arresting and prosecuting petitioners, the State has either enforced or supported racial segregation in a place open to the general public, thereby infringing their rights under the Fourteenth Amendment to the United States Constitution. Petitioners, in their appeal, did not challenge the right of the store manager to select his customers, but asserted that the State cannot implement and enforce segregation by direct action on the part of its police nor by statutory scheme. The record demonstrates that both forms of State action were present in this matter.

Conclusion

Wherefore, petitioners request they be granted a rehearing in this case.

Columbia, South Carolina
November 16, 1961

Jenkins and Perry, Columbia, South Carolina, By: Matthew J. Perry; Willie T. Smith, Jr., Greenville, South Carolina, Attorneys for Petitioners.

[fol. 71]

Certificate to Petition for Rehearing

I, Harold R. Boulware, hereby certify that I am a practicing attorney of this Court and am in no way connected with the within case. I further certify that I am familiar with the record of this case and have read the opinion of this Court which was filed November 10, 1961, and in my opinion there is merit in the Petition for Rehearing.

Harold R. Boulware

Columbia, South Carolina
November 16, 1961.

[fol. 72]

IN THE SUPREME COURT OF SOUTH CAROLINA

ORDER DENYING PETITION FOR REHEARING
—November 30, 1961

The Court neither overlooked nor misapprehended any of the facts set forth herein. Therefore the Petition is denied.

C. A. Taylor, C.J., G. Dewey Oxner, A.J., Lionel K. Legge, A.J., Joseph R. Moss, A.J., J. Woodrow Lewis, A.J.

[fol. 73]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

[Title omitted]

PETITION FOR STAY OF REMITTITUR

To the Honorable Claude A. Taylor, Chief Justice of the Supreme Court of South Carolina:

The petition of James Richard Petersen, Yvonne Joan Eddy, Helen Angela Evans, David Ralph Strawder, Harold James Fowler, Frank G. Smith, Robert Crockett, James Carter, Doris Delores Wright and Rose Marie Collins, respectfully shows:

1.

Petitioners have been convicted of the offense of trespass after notice under Section 16-388, Code of Laws of South Carolina for 1952. Their sentences and convictions have been affirmed by the Supreme Court of South Carolina in an Opinion which was filed on November 10, 1961.

2.

Thereafter, petitioners requested rehearing of said cause in a Petition therefor dated November 16, 1961. Rehearing was denied on November 30, 1961.

3.

Petitioners are aggrieved with said decision and intend to petition the Supreme Court of the United States for a Writ of Certiorari in order that that Court can pass upon petitioners' contention that their arrests and convictions [fol. 74] were in furtherance of a custom of racial segregation in violation of the Fourteenth Amendment to the United States Constitution.

4.

Under the Rules of the United States Supreme Court, petitioners have ninety (90) days after the rendering of the final judgment of this Court within which to file their Petition for Writ of Certiorari. Petitioners are therefore desirous of obtaining a stay of the sentences imposed upon them and a Stay of the Remittitur herein for a period of ninety (90) days after the rendering of the final judgment of this Court in order that they may have time within which to file said Petition for Writ of Certiorari.

5.

Counsel for the City of Greenville have agreed to a proposed Order, Staying the Remittitur for the requested period.

Wherefore, petitioners pray that execution of their sentences be stayed and that Remittitur in this matter be stayed by order to this Honorable Court for a period of ninety (90) days after the final judgment of said Court in order that they may file in the United States Supreme Court a Petition for Writ of Certiorari.

Jenkins and Perry, Columbia, South Carolina, By: Matthew J. Perry; Willie T. Smith, Jr., Greenville, South Carolina, Attorneys for Petitioners.

December 1, 1961

[fol. 75]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

[Title omitted]

ORDER STAYING REMITTITUR—December 2, 1961

On the 10th day of November, 1961, we issued an Opinion in the above case, affirming the judgment of the Greenville County Court which sustained the judgment of the Municipal Court of the City of Greenville wherein appellants were convicted of violating Section 16-388, Code of Laws of South Carolina for 1952, namely, Trespass after Notice.

Thereafter, appellants petitioned this Court for a rehearing and, on November 30, 1961, we entered an Order, denying same.

Appellants have now indicated that they desire and intend to file in the Supreme Court of the United States a Petition for Writ of Certiorari, seeking review of our judgment in said cause. Under the rules and decisions of the United States Supreme Court, they have ninety (90) days after the final judgment of this Court within which to file their Petition for Writ of Certiorari. The final judgment of this Court is the Order, denying rehearing. *Department of Banking, State of Nebraska* v. *Pink*, 63 S. Ct. 233, 317 U. S. 264, 87 L. Ed. 254. They desire a stay of the Remittitur and Sentences in this matter pending the filing of their petition for Writ of Certiorari in the United States Supreme Court and thereafter until said matter has been disposed of by that Court. It appears that the request for stay of remittitur and sentences is proper. Now, on motion of counsel for the appellants, by [fol. 76] and with the consent of counsel for the respondent,

It Is Ordered that the Remittitur and execution of the Sentences herein be stayed for a period of ninety (90) days after the day of the final judgment of this Court in order that they may file with the United States Supreme Court their Petition for Writ of Certiorari.

It Is Further Ordered that if a notice from the Clerk of the United States Supreme Court that the Petition for Writ of Certiorari has been filed in that Court is filed with the Clerk of the Supreme Court of South Carolina

within the time aforesaid, the stay of remittitur and execution of sentences herein shall continue in effect until final disposition of the case by the Supreme Court of the United States.

December 2d, 1961.

C. A. Taylor, Chief Justice.

We Consent: W. H. Arnold, H. F. Partee, Attorneys for Respondent.

[fol. 77] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 78]

SUPREME COURT OF THE UNITED STATES

No. 750, October Term, 1961

JAMES RICHARD PETERSON, et al., Petitioners,

vs.

CITY OF GREENVILLE.

ORDER ALLOWING CERTIORARI—June 25, 1962

The petition herein for a writ of certiorari to the Supreme Court of the State of South Carolina is granted, and the case is transferred to the summary calendar. The case is set for argument to follow No. 721.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this petition.